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7 Attorneys for Defendant/Counter-Plaintiff,
8 KEATING DENTAL ARTS, INC.

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION

13 JAMES R. GLIDEWELL DENTAL
CEAMICS, INC. dba GLIDEWELL
14 LABORATORIES,

15 Plaintiff,

16 v.

17 KEATING DENTAL ARTS, INC.

18 Defendant.

19 AND RELATED COUNTERCLAIMS.
20
21
22

) Civil Action No.
) SACV11-01309-DOC(ANx)

) **NOTICE OF ERRATA TO**
) **KEATING DENTAL ARTS,**
) **INC.'S REPLY IN SUPPORT**
) **OF ITS MOTION FOR**
) **LEAVE TO FILE A SECOND**
) **AMENDED ANSWER,**
) **AFFIRMATIVE DEFENSE**
) **AND COUNTERCLAIMS**

) HEARING:
) Date: October 15, 2012
) Time: 8:30 am
) Place: Courtroom 9D

) Honorable David O. Carter

1 Defendant Keating Dental Arts, Inc. respectfully submits this *Notice of*
 2 *Errata* to address a mis-citation in its Reply brief in support of its Motion for
 3 Leave to File a Second Amended Answer (Docket No. 61). Specifically,
 4 Keating's Reply cites to the Ninth Circuit case *Filipino Yellow Pages, Inc.* for
 5 the proposition that U.S. trademark law recognizes that a mark may be ineligible
 6 for protection if it is a phonetic equivalent to a generic term. (*See* Reply at 5–6.)
 7 While *Filipino Yellow Pages, Inc.* is sound law on assessing genericness, it is
 8 not the proper cite regarding phonetic equivalence.

9 On the phonetic equivalence issue, *see* MCCARTHY ON TRADEMARKS, 4TH
 10 EDITION, § 12:38, "Misspelling of generic terms" (attached as **Ex. A**); *Miller*
 11 *Brewing Co. v. G. Heileman Brewing Co.*, 561 F.2d 75, 81 (7th Cir. 1977)
 12 ("Lite Beer" phonetic equivalent to generic "light beer" (cited in Keating's
 13 opening brief at 7)); *Nupla Corp. v. IXL Mfg. Co.*, 114 F.3d 191, 196 (Fed. Cir.
 14 1997) (affirming Central District of California conclusion as a matter of law that
 15 plaintiff's registered mark CUSH-N-GRIP is invalid as a generic misspelling of
 16 "cushion grip" for cushioned tool handles); *Rudolph Int'l v. Realys Inc.*, 482
 17 F.3d 1195, 1198 (9th Cir. 2007) (citing to *Nupla Corp.* ("cush-n-grip" is
 18 generic adjective for cushion-gripped tools"); *Brookfield Communications v.*
 19 *West Coast Entertainment*, 174 F.3d 1036, 1058 fn. 19 (9th Cir. 1999) (citing to
 20 *Miller Brewing Co.* ("Light Beer" or "Lite Beer"))).

21 Respectfully submitted,

22 KNOBBE, MARTENS, OLSON & BEAR, LLP

23
 24 Dated: October 9, 2012

25 By: David G. Jankowski

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